

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

NICOLE PENDLETON

3120 85th St., Apt. 1
Kenosha, WI 53142

Plaintiff,

Case No: 18-cv-987

vs.

WISCONSIN HOSPITALITY GROUP, LLC

d/b/a APPLEBEE'S

2120 Pewaukee Road, Suite 200
Waukesha, WI 53188

Defendant.

COLLECTIVE ACTION COMPLAINT

1. This is a collective action brought by Individual and Representative Plaintiff Nicole Pendleton ("Pendleton" or "Named Plaintiff"), on her own behalf and on behalf of the members of the proposed class identified below. Pendleton and the members of the putative class were employed by Wisconsin Hospitality Group, LLC, d/b/a Applebee's, as servers. These putative class members worked at the Applebee's located at 6950 75th Street, Kenosha, Wisconsin ("Kenosha Applebee's"). Pendleton and the members of the putative class worked as servers and were paid the tipped minimum wage of \$2.33 per hour, with Defendant taking the tip credit toward the minimum wage. However, these putative class members were required to wash dishes and perform other non-tipped job duties but were not paid the statutory

minimum wage of \$7.25 for this non-tip-generating work. Pendleton and the putative class members are similarly situated under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

2. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, this action being brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*

3. Venue is proper in the United States District Court for the Eastern District of Wisconsin, Milwaukee Division, because Defendant regularly operates in this district and because the events giving rise to these claims occurred in this district.

PARTIES

4. Named Plaintiff, Nicole Pendleton, is an adult resident of Kenosha, Wisconsin. Pendleton was employed as a server by Defendant at the Kenosha Applebee’s from July 2017 to February 2018. Pendleton’s signed consent form is attached as Exhibit A to this Complaint and is incorporated herein.

5. Defendant, Wisconsin Hospitality Group, LLC, is a Wisconsin corporation that owns and operates 33 Applebee’s Grill & Bar Restaurants within Wisconsin, and its principal place of business in Pewaukee, Wisconsin. Defendant operates the Kenosha Applebee’s located at 6950 75th Street, Kenosha, Wisconsin.

6. Defendant’s registered agent for service of process is Timothy J. Randall, 2120 Pewaukee Road, Suite 200, Waukesha, Wisconsin 53188.

7. Defendant is an “employer” within the meaning of 29 U.S.C. § 203(d).

8. Defendant is an enterprise engaged in commerce within the meaning of 29 U.S.C. § 203(s)(1).

FACTUAL ALLEGATIONS

9. During the three-year period preceding the filing of this Complaint, Named Plaintiff and the putative class members are or were employed by Defendant, within the meaning of 29 U.S.C. § 203(e), as servers.

10. During the three-year period preceding the filing of this Complaint, Named Plaintiff and the putative class members were treated as “tipped employees” pursuant to 29 U.S.C. § 203(t).

11. Throughout the three-year period preceding the filing of this Complaint, Defendant claimed a “tip credit” against the wages of Named Plaintiff and the putative class members, by which it credited a portion of tips against the full hourly minimum wage of \$7.25/hour and thus paid Named Plaintiff and the putative class members an hourly rate that was less than minimum wage.

12. Specifically, Defendant paid Named Plaintiff and the putative class members a cash wage of \$2.33/hour.

13. Throughout the three-year period preceding the filing of this Complaint, Defendant had a policy and practice by which it required Named Plaintiff and the putative class members to perform duties that were unrelated to their tipped occupation and/or non-tip producing.

14. For example, during the three-year period preceding the filing of this Complaint, Defendant did not employ a dishwasher to work at the Kenosha Applebee's, and as a result, Named Plaintiff and the putative class members were required to wash dishes during their shift.

15. Throughout the three-year period preceding the filing of this Complaint, Defendant paid Named Plaintiff and the putative class members the tipped minimum wage of \$2.33/hour while Plaintiffs were engaged in duties unrelated to their tipped occupation and/or in duties that were non-tip producing for a substantial portion of their shift, including, but not limited to, washing dishes.

16. Named Plaintiff brings this action on behalf of herself and on behalf of other similarly-situated employees, pursuant to 29 U.S.C. § 216(b). The **Collective Class** of similarly-situated employees is defined as:

All persons employed by Wisconsin Hospitality Group, LLC as servers at the Applebee's Grill & Bar Restaurant located at 6950 75th Street, Kenosha, Wisconsin who performed work at any time during the past three years for which they were paid the tipped minimum wage.

CLAIM FOR RELIEF
FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF THE FLSA

17. Named Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs.

18. Defendant is an employer within the meaning of 29 U.S.C. § 203(d).

19. Named Plaintiff and the members of the putative Collective Class were employees of Defendant within the meaning of 29 U.S.C. § 203(e).

20. At all relevant times, Defendant had a policy and practice of paying Named Plaintiff and the members of the putative Collective Class the tipped minimum wage for work that is unrelated to their tipped occupation and/or for work that is non-tip-producing and comprised a substantial portion (in excess of 20%) of their shifts.

21. These practices violate the FLSA, including, but not limited to, 29 U.S.C. §§ 203(m) and 206, and 29 C.F.R. § 531.56(e).

22. Because of these violations, Named Plaintiff and the members of the putative Collective Class have suffered a wage loss.

23. Defendant knew or showed reckless disregard for the fact that it failed to pay Named Plaintiff and the members of the putative Collective Class minimum wage compensation in violation of the FLSA.

REQUEST FOR RELIEF

WHEREFORE, Named Plaintiff, Nicole Pendleton, on behalf of herself and all members of the Collective Class, requests for the following relief:

A. An order designating this action as a collective action on behalf of the Collective Class and directing issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly-situated individuals;

B. An order designating Pendleton as the Named Plaintiff;

C. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;

D. An order finding that Wisconsin Hospitality Group, LLC violated the FLSA;

E. An order finding that these violations were willful;

F. Judgment against Wisconsin Hospitality Group, LLC in the amount equal to Named Plaintiff's and the Collective Class's unpaid back wages at the applicable minimum and overtime wage rate;

G. An award in the amount of all liquidated damages and penalties as provided under the FLSA;

H. An award in the amount of all costs and attorneys' fees incurred in prosecuting these claims;

I. Leave to amend the Complaint to add additional claims; and

J. Such further relief as the Court deems just and equitable.

Dated this 27th day of June, 2018.

Attorneys for the Plaintiffs

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